



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

[Docket Number USCG-2021-0266]

RIN 1625-AA08

### Special Local Regulation; Back River, Baltimore County, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard is proposing to establish temporary special local regulations for certain waters of Back River. This action is necessary to provide for the safety of life on these navigable waters located in Baltimore County, MD, during a high-speed power boat event on July 10, 2021, and July 11, 2021. This proposed rulemaking would prohibit persons and vessels from entering the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Event Patrol Commander. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2021-0266 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-

National Capital Region; telephone 410-576-2674, e-mail D05-DG-SectorMD-NCR-MarineEvents@uscg.mil.

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
PATCOM	Patrol Commander
§	Section
U.S.C.	United States Code

### **II. Background, Purpose, and Legal Basis**

On April 16, 2021, the Chesapeake Bay Power Boat Association of Edgewater, MD, notified the Coast Guard that it will be conducting the 1st Annual Shootout on the River 2021 from 10 a.m. to 5 p.m. on July 10, 2021, and from 10 a.m. to 5 p.m. on July 11, 2021. The individually-timed power boat speed runs event consists of approximately 50 participants competing on a designated, marked linear course located on Back River, between Lynch Point to the south and Walnut Point to the north. The event is being staged out of Tiki Lee's Dock Bar, 4309 Shore Road, Sparrows Point, in Baltimore County, MD. Details of the event were provided to the Coast Guard by the sponsoring organization on May 3, 2021. Hazards from the high-speed power boat competition include participants operating within and adjacent to the designated navigation channel and interfering with vessels intending to operate within that channel, as well as operating within approaches to local marinas and boat facilities and waterfront residents. The Captain of the Port (COTP) Maryland-National Capital Region has determined that potential hazards associated with the high-speed power boat competition would be a safety concern for anyone intending to operate within certain waters of Back River in Baltimore County, MD, operating in or near the event area.

The Coast Guard is requesting that interested parties provide comments within a

shortened comment period of 15 days instead of the more typical 30 days for this notice of proposed rulemaking. The Coast Guard believes a shortened comment period is necessary and reasonable to ensure the Coast Guard has time to review and respond to any significant comments submitted by the public in response to the NPRM and has final rule in effect in time for the scheduled event.

The purpose of this rulemaking is to protect event participants, non-participants, and transiting vessels before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

### **III. Discussion of Proposed Rule**

The COTP Maryland-National Capital Region is proposing to establish special local regulations from 9 a.m. on July 10, 2021, through 6 p.m. on July 11, 2021. There is no alternate date planned for this event. The regulated area would cover all navigable waters of Back River, within an area bounded by a line connecting the following points: from the shoreline at Lynch Point at latitude 39°14'46" N, longitude 076°26'23" W, thence northeast to Porter Point at latitude 39°15'13" N, longitude 076°26'11" W, thence north along the shoreline to Walnut Point at latitude 39°17'06" N, longitude 076°27'04" W, thence southwest to the shoreline at latitude 39°16'41" N, longitude 076°27'31" W, thence south along the shoreline to the point of origin, located in Baltimore County, MD. The regulated area is approximately 4,200 yards in length and 1,200 yards in width.

This proposed rule provides additional information about areas within the regulated area and their definitions. These areas include "Course Area," "Buffer Area," and "Spectator Area."

The proposed size of the regulated area is intended to ensure the safety of life on these navigable waters before, during, and after the high-speed power boat competition, scheduled from 10 a.m. to 5 p.m. on July 10, 2021, and from 10 a.m. to 5 p.m. on

July 11, 2021. The COTP and the Coast Guard Event Patrol Commander (PATCOM) would have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area would be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for 1st Annual Shootout on the River participants and vessels already at berth, a vessel or person would be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators would be able to request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF-FM channel 16. Vessel traffic would be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A vessel within the regulated area must operate at safe speed that minimizes wake. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols would be considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign. Official Patrols enforcing this regulated area can be contacted on VHF-FM channel 16 and channel 22A.

If permission is granted by the COTP or Event PATCOM, a person or vessel would be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels would be required to operate at a safe speed that minimizes wake while within the regulated area. A spectator vessel must not loiter within the navigable channel while within the regulated area. Official patrol vessels would direct spectators to the designated spectator area. Only participant vessels and official patrol vessels would

be allowed to enter the course area. The Coast Guard would publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event dates and times.

The regulatory text we are proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the location, size and duration of the regulated area, which would impact a small designated area of Back River for 18 total enforcement hours. The Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area. Moreover, the rule would allow vessels to seek permission to enter the regulated area, and vessel traffic would be able to safely transit the regulated area once the Event PATCOM deems it safe to do so.

##### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit

organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the

various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR Part 100 applicable to organized marine events on the navigable waters of the United States that could

negatively impact the safety of waterway users and shore side activities in the event area lasting for 18 total enforcement hours. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and public



comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. If you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

### **PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70034 ; 33 CFR 1.05-1.

2. Add § 100.501T05-0266 to read as follows:

#### **§ 100.501T05-0266 1st Annual Shootout on the River, Back River, Baltimore County, MD.**

(a) *Locations.* All coordinates are based on datum WGS 1984.

(1) *Regulated area.* All navigable waters of Back River, within an area bounded by a line connecting the following points: from the shoreline at Lynch Point at latitude 39°14'46" N, longitude 076°26'23" W, thence northeast to Porter Point at latitude 39°15'13" N, longitude 076°26'11" W, thence north along the shoreline to Walnut Point at latitude 39°17'06" N, longitude 076°27'04" W, thence southwest to the shoreline at latitude 39°16'41" N, longitude 076°27'31" W, thence south along the shoreline to the point of origin, located in Baltimore County, MD. The course area, buffer area, and spectator area are within the regulated area.

(2) *Course Area*. The course area is a polygon in shape measuring approximately 2.2 statute miles in length by 500 feet in width. The area is bounded by a line commencing at position latitude 39°16'53.5" N, longitude 076°26'53.4" W, thence east to latitude 39°16'54.4" N, longitude 076°26'47.1" W, thence south to latitude 39°15'01.1" N, longitude 076°26'33.8" W, thence west to latitude 39°14'59.4" N, longitude 076°26'39.4" W, thence north to the point of origin.

(3) *Buffer Area*. The buffer area is a polygon in shape measuring approximately 300 feet in all directions surrounding the entire course area described in the preceding paragraph of this section. The area is bounded by a line commencing at position latitude 39°16'56.2" N, longitude 076°26'57.7" W, thence east to latitude 39°16'57.7" N, longitude 076°26'43.7" W, thence south to latitude 39°14'59.0" N, longitude 076°26'29.7" W, thence west to latitude 39°14'55.8" N, longitude 076°26'42.7" W, thence north to the point of origin.

(4) *Spectator Area*. The designated spectator area is a polygon in shape measuring approximately 1,000 yards in length by 500 feet in width. The area is bounded by a line commencing at position latitude 39°16'33.7" N, longitude 076°26'40.7" W, thence east to latitude 39°16'34.5" N, longitude 076°26'34.7" W, thence south to latitude 39°16'05.0" N, longitude 076°26'31.1" W, thence west to latitude 39°16'04.4" N, longitude 076°26'37.4" W, thence north to the point of origin.

(b) *Definitions*. As used in this section---

*Buffer Area* is a neutral area that surrounds the perimeter of the Course Area within the regulated area described by this section. The purpose of a buffer area is to minimize potential collision conflicts with marine event participants or high-speed power boats and spectator vessels or nearby transiting vessels. This area provides separation between a Course Area and a specified Spectator Area or other vessels that are operating in the vicinity of the regulated area established by the special local regulations.

*Captain of the Port (COTP) Maryland-National Capital Region* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

*Course Area* is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a course area within the regulated area defined by this section.

*Event Patrol Commander or Event PATCOM* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

*Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

*Participant* means all persons and vessels registered with the event sponsor as participating in the “1st Annual Shootout on the River” speed runs event, or otherwise designated by the event sponsor as having a function tied to the event.

*Spectator* means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

*Spectator Area* is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined by this part.

(c) *Special local regulations.* (1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling

the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must enter the designated Spectator Area or pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) Only participant vessels and official patrol vessels are allowed to enter the race area.

(5) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Event PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz) or the Event PATCOM on Marine Band Radio, VHF-FM channel 16 (156.8 MHz).

(6) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event dates and times.

(d) Enforcement officials. The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other federal, state, and local agencies.

(e) Enforcement period. This section will be enforced from 9 a.m. to 6 p.m. on July 10, 2021, and, from 9 a.m. to 6 p.m. on July 11, 2021.

Dated: May 19, 2021.

David E. O'Connell,  
Captain, U.S. Coast Guard,  
Captain of the Port Maryland-National Capital Region.  
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